



MEMO ENDORSED

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Submitted Under Seal – References Confidential Information

July 24, 2007

BY FACSIMILE

The Honorable James C. Francis, IV
United States Magistrate Judge
Southern District of New York
500 Pearl Street, Room 1960
New York, NY 10007-1312

USDC SDNY
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04 Civ 7922
(KMK) (JCF)
LEAD CASE

Re: Sarah Coburn, et al. v. The City of New York, et al. 05 Civ. 7623 (KMK)(JCF) *DOCKET IN*
Nikolas Sikelianos v. The City of New York, et al. 05 Civ. 7673 (KMK)(JCF) *ALL*
Emily Sloan, et al. v. The City of New York, et al. 05 Civ. 7668 (KMK)(JCF) *CASES*
Lashley Carney, et al. v. The City of New York, et al. 05 CV 7672 (KMK)(JCF)
Gwynn Galitzer v. The City of New York, et al. 05 CV 7669 (KMK)(JCF)
Jeffrey Phillips, et al. v. The City of New York, et al. 05 CV 7624 (KMK)

Dear Judge Francis:

Pursuant to Fed. R. Civ. Pro. 37(a), defendants write to compel discovery of plaintiffs in the above-captioned cases, which are part of the RNC cases consolidated before Your Honor.

I. Mr. Rothman Has Not Complied With His Discovery Obligations Since He Was Served In November, 2005.

We served Defendants' First Set of Interrogatories and Request for Production of Documents on Jeffrey Rothman, counsel for plaintiffs in those actions, on the following dates:

- Coburn, November 4, 2005;
- Sikelianos, November 4, 2005;
- Sloan, January 20, 2006;
- Carney, November 3, 2006;
- Phillips, November 3, 2006;

- Galizter, November 3, 2006.

Since December, 2006, defendants have made strenuous efforts to obtain this discovery through oral and written communications with Mr. Rothman – all to no avail.¹ On July 20, 2007, we demanded, once again, that Mr. Rothman comply with his discovery obligations. *See*, letter to Mr. Rothman dated July 20, 2007, attached hereto as Exhibit B). Mr. Rothman ignored that request. Moreover, on at least two previous occasions, defendants were forced to seek Your Honor's intervention to compel Mr. Rothman to provide releases for plaintiffs' medical, pharmaceutical and mental health treatment, prior arrests and economic injuries. (*See* letters from Jeffrey A. Dougherty dated May 18, 2007, May 22, 2007 and June 7, 2007, attached hereto as Exhibit C). He produced that discovery under threat of dismissal.

When defendants were unable to locate two officers scheduled for depositions last week, Mr. Rothman sprinted to the Courthouse steps to complain bitterly and demand cost-shifting sanctions for his troubles. Yet he has failed to (1) provide discovery for *any plaintiff* in the Carney and Galizter matters; (2) provide *any discovery* for plaintiffs Justin Barron and Emily Sloan; (3) provide plaintiffs' verifications for deficient discovery responses in *Phillips v. City of New York*; or (4) respond to defendants repeated requests that he correct gross deficiencies in discovery responses for *eleven* individual plaintiffs. (See Exhibits A, B and C).

As the second anniversary of defendants' First Set of Interrogatories and Requests for Production of Documents fast approaches, we are forced to conduct depositions of plaintiffs in the above-captioned matters without the necessary documents or interrogatory responses. This situation cannot stand.

II. Relief Requested

For the foregoing reasons, defendants respectfully request that the Court:

- (1) Order plaintiffs to provide the information sought in defendants' letter to Mr. Rothman dated July 20, 2007 (attached hereto as Exhibit B);
- (2) Order plaintiffs to provide this discovery on or before July 27, 2007 or their claims shall be dismissed with prejudice; and
- (3) Grant such further relief as Your Honor deems just and proper.

3/24/07
The discovery at issue here
does not consist of mere "loose ends".
Plaintiffs shall provide complexe
responses by September 5, 2007. /s/
Respectfully submitted,
James L. Farren IV

Tonya Lenerette (TJ7276)

¹ See, e.g., e-mails to Mr. Rothman dated December 13, 2006, January 31, 2007, February 9, 2007, March 2, 2007, March 15, 2007, March 16, 2007 and May 14, 2007 attached hereto as Exhibit A.